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SUBJECT: WTO DEMARCHE REQUEST - U.S./EC TEXTILES, APPAREL,
FOOTWEAR, AND TRAVEL GOODS PROPOSAL

REF: A. SCHEIBE-NEULING EMAIL 3/13

1B. 07 STATE 57995 AND PREVIOUS

11. This is an action request. See paragraph 2.

12. Action Request: In coordination with European Commission representation, Post is requested to approach host government at the Econ Counselor or other appropriate level and seek co-sponsorship of a joint U.S./ European Communities (EC) proposal on non-tariff barriers (NTBs) to textiles, apparel, footwear, and travel goods (TAFT) at the WTO. If practical problems arise in organizing this demarche with Commission representation in a timely manner, Posts may deliver it separately. In this case, Posts should ask the Commission for reporting from any meetings they have with host governments. Washington has jointly drafted and cleared this demarche with Brussels. We therefore expect that the Commission will be delivering the same message to host governments.

13. The full text of the joint U.S./EC TAFT proposal has been emailed to Post and may be left with host government officials. Background on specific provisions within the joint text for Post's use as needed may be found in paragraph 6 below.

14. In discussions with host governments, Posts should draw on the following key points:

USG/EC Objectives:

-- The United States and EC are seeking formal, public co-sponsorship of the negotiating text.

-- As action addressee government's Geneva WTO delegation has expressed much interest in the U.S./EC proposal (and previous separate U.S. and EC proposals on the same issue) over the last two years, the United States and EC would like to invite these governments to join as co-sponsors.

-- Co-sponsoring this text will enable the facilitation of trade in textiles with a simple and streamlined process, including certain parameters and recommendations of what can and cannot be required on labels, while preserving Members' ability to achieve certain legitimate objectives as outlined in Article 2 of the WTO Agreement on Technical Barriers to Trade.

-- This proposal would also fulfill a mandate in the Doha Declaration asking WTO Members to address non-tariff barriers that are of interest to developing countries.

-- The textile and clothing sector is particularly important for developing countries. For many, it is the most important industrial sector, in terms of exports (and therefore as source of foreign income) and in terms of employment.

-- Should host governments indicate they are unable to co-sponsor, Washington agencies are interested in learning of any problems or concerns host governments may have with the negotiating text.

What the negotiating text does:

-- The text covers textiles, apparel (or clothing), and footwear, as well as travel goods, which U.S. industry had asked for specifically.

-- The text would streamline labeling requirements on a global scale, provide flexibility for exporters if labeling requirements are changed mid-shipment, and lower costs for suppliers while passing savings onto consumers.

-- The text does not propose establishing new labeling requirements per se, but seeks to simplify labeling and facilitate trade by setting parameters and recommendations on what information Members can and cannot require on labels.

USG/EC Efforts to Advance the Text:

-- U.S. and EC delegations held a number of meetings with WTO Members in 2006 and 2007 in Geneva, and learned there is interest among a number of countries, developed and developing, to continue exploring an agreement in this area.

-- As these products are heavily traded by developing countries, developing countries have shown increasing interest in the U.S. and EC proposal, and have increasingly intervened on the subject.

End points.

Background on the TAFT Proposal

15. On October 26, 2007, the United States and the European Communities (EC) jointly tabled in the WTO Negotiating Group on Market Access a negotiating text on reducing non-tariff barriers to trade related to labeling of textiles, apparel, footwear, and travel goods. The United States first indicated its interest in negotiating NTBs affecting textiles, apparel, footwear, and travel goods at the WTO in November 2004, and formally submitted its negotiating text on Textiles, Apparel, Footwear and Travel Goods Labeling Requirements in May 2006. Intensive negotiations continued thereafter on the U.S. proposal, along with an EC negotiating proposal submitted in April 2006. In April 2007, the EC submitted a legal draft negotiating text, which was followed by WTO Members' comments and calls for a merged U.S./EC negotiating text. The United States and EC have had numerous discussions with trading partners at the WTO and meetings with capital-based officials concerning this issue. Textiles, apparel, footwear, and travel goods are products of importance to a range of countries, both developed and developing. In this regard, a significant number of WTO Members have an economic stake in the U.S./EC proposal. We are now seeking formal, public co-sponsorship of the joint U.S./EC negotiating text from action addressee host governments. The full text of this proposal has been emailed to Post.

16. Background on Paragraphs of Negotiating Text

Title

Many Members had questioned the relationship between a new agreement and the existing TBT Agreement. To address those concerns, we re-formulated the text as an "understanding" that will be an agreed interpretation of the TBT Agreement, rather than as a stand-alone agreement. This approach is not new: Members adopted six Understandings of the GATT 1994 as a result of the Uruguay Round. The new title of the negotiating text is: "Understanding on the Interpretation of the Agreement on Technical Barriers to Trade With Respect to the Labeling of Textiles, Clothing, Footwear, and Travel Goods." The "Understanding" sets out how the TBT Agreement disciplines will apply in the context of the products

contained or referenced in the Annex to the Understanding.

Paragraph 2

In the revised text, we clearly identify the types of required information on labels that are to be considered not more trade-restrictive than necessary to fulfill a legitimate objective within the meaning of Article 2.2 of the TBT Agreement.

The text does not preclude Members from requiring other types of information to be placed on labels, such as information to support stated legitimate objectives including protection of human health or safety. However, the Article 2.2 obligations would still apply to those requirements, just as they do now.

Thus, for all other types of information, there is no change in their legal status under the TBT Agreement.

Footnote 1

We include a footnote providing that the presumption covers technical regulations that use relevant international standards, or the relevant parts of such standards, as a basis. It is our understanding that this should be an easy obligation to fulfill, as ISO and ASTM developed the two standards currently in use, both of which are international standards.

Paragraph 3

We propose that Members give positive consideration to not requiring information on permanent labels other than the types of information we specifically mention.

Paragraph 4

In addition, we provide an illustrative list of technical regulations that would be considered more trade-restrictive than necessary to fulfill a legitimate objective within the meaning of Article 2.2 of the TBT Agreement.

Examples include: prohibiting information on labels from being in more than one language; requiring labels to be pre-approved, registered or certified; specifying requirements that a label be of one or more materials; and prohibiting labels from containing information that is not required by the Member, such as brand names. For this last category, we clarify that the information we are talking about is information related to the product or the marketing of the product - brand name being the most obvious example. Of course, Members are free to prohibit information that is false, deceptive, or misleading.

Paragraphs 5

The text also enhances the notification provisions provided by the TBT Agreement for the specific products covered:

- Members must notify to the WTO ANY proposed technical regulation or conformity assessment procedure related to labeling for the covered merchandise. Current rules provide that Members only need to notify if a relevant international standard does not exist or the technical content of the proposed technical regulation or conformity assessment procedure is not in accordance with the technical content of a relevant international standard, AND if the technical regulation may have a significant effect on trade;
- Members shall publish the actual proposed technical regulation or conformity assessment procedure, rather than simply a notice that the Member proposes to introduce a measure with a subsequent commitment to provide Members a copy of the proposed measure upon request;
- Members shall identify up front the parts of the proposed measure that in substance deviate from relevant international standards, rather than providing such information subsequently upon request;
- Members shall allow at least 60 days for other Members to submit comments and shall provide favorable consideration to reasonable requests to extend the comment period, rather than simply providing "reasonable time" for comments;

- Members shall publish or otherwise make available to the public, either in print or electronically, their responses to significant comments they receive from other Members no later than the date they publish the final technical regulation or conformity assessment procedure; and

- Members must allow all interested persons, not just Members, to participate in the discussions on comments as well. Currently Members have no obligation to allow interested persons to submit comments in writing, though in practice of course this often happens.

- The language in paragraph 6 emulates that in TBT Agreement Articles 2.10 and 5.7.

Paragraph 7

With respect to institutional arrangements, the Committee on Technical Barriers to Trade shall review the operation and implementation of the Understanding on an annual basis. The Understanding also contains language providing that the Committee will review other developments in technical regulations and conformity assessment procedures involving international trade in textiles, clothing, footwear, and travel goods of importance to Members.

End background

¶6. Please slug responses for USTR (BNorton, JWeiss) and Commerce (EBrzytwa). State POC for this demarche is Aaron Scheibe in the Economic, Energy, and Business Affairs Bureau's Office of Multilateral Trade. Mr. Scheibe may be contacted at (202) 647-8202 or scheibeap@state.gov.

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